

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHRISTY MCSWIGGIN, et al.,
 Plaintiff(s),
 vs.
 OMNI LIMOUSINE,
 Defendant(s).

Case No. 2:14-cv-02172-JCM-NJK
 ORDER
 (Docket No. 42)

Presently before the Court is Defendant's Motion to Strike the Opinions of Plaintiffs' Expert Witness. Docket No. 42. Plaintiffs filed a response, and Defendant filed a reply. Docket Nos. 54, 60. The Court finds the matter properly resolved without oral argument. *See* LR 78-1. As Defendant's motion is premature, it is **DENIED** without prejudice.

This is a collective and class action, in which Plaintiffs allege various claims for unpaid wages under federal and state law. Docket No. 54 at 2. On July 16, 2015, United States District Judge James C. Mahan conditionally certified the class and permitted Plaintiffs to circulate a notice of litigation to the prospective class members. Docket No. 21 at 6-7.

Plaintiffs, however, never circulated the court-approved notice. Docket No. 27 at 1. Thus, no notice of this litigation has been given to the prospective class members. *Id.* A Motion for an Order Extending Time for Providing Notice and Opting-in to Litigation is pending, as are the parties' respective motions regarding certification. *See* Docket Nos. 27, 35, 36.

//

1 Defendant's motion to strike attacks the opinions of Plaintiffs' expert, Mr. James Toney, who
2 opines on the extent of Plaintiffs' unpaid wages and unpaid overtime hours. Docket No. 42-2 at 5-17.
3 Defendant characterizes Mr. Toney's opinion as reliant on a flawed methodology, inherently unreliable,
4 and misleading to the jury. Docket No. 42 at 11-20. Defendant's argument centers on the contention
5 that Mr. Toney "took no steps to ensure that his sample was actually representative of the population
6 before he attempted to extrapolate his sampling result to the putative class as a whole." *Id.* at 15.
7 Plaintiffs respond that, since putative class members have not been afforded an opportunity to opt-in
8 this litigation, Plaintiffs have been unable to conduct discovery regarding the prospective class
9 members. Docket No. 54 at 4 n.6. Plaintiffs submit that Mr. Toney cannot create a statistically valid
10 sample until they obtain this information. *Id.* at 7-8.

11 Accordingly, the rulings on Plaintiffs' Motion for an Order Extending Time for Providing Notice
12 and Opting-in to Litigation and the parties' respective certification motions, Docket Nos. 27, 35, 36,
13 may impact or dispose of the arguments presently before the Court. Therefore, Defendant's Motion to
14 Strike the Opinions of Plaintiffs' Expert Witness, Docket No. 42, is **DENIED** without prejudice as
15 premature. Upon the disposition of the motions at Docket Nos. 27, 35, and 36, Defendant shall be
16 permitted to refile its motion. Any refiled motion shall contain relevant updates to the cited facts and/or
17 procedural history of the case, as well as all relevant authority.

18 IT IS SO ORDERED.

19 DATED: July 25, 2016

20 
21 _____
22 NANCY J. KORPE
23 United States Magistrate Judge
24
25
26
27
28